

GAHC010015842021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/675/2021

KARUNA RANI ROY
W/O. LT. MANORANJAN ROY, VILL. JOGIPARA, VIP, P.O. AND P.S.
BORJHAR, PIN-781015, DIST. KAMRUP (M), ASSAM.

VERSUS

THE AIRPORT AUTHORITY OF INDIA AND 9 ORS
REP. BY REGIONAL EXECUTIVE DIRECTOR, REGIONAL HEADQUARTER,
NORTH EASTERN REGION, P.O. GUWAHATI-781085 AUTHORITY OF INDIA.

2:THE REGIONAL EXECUTIVE DIRECTOR (ER)

AAI
NSCBI AIRPORT KOLKATA-700052 (FOR INFORMATION AND ACTION IN
TIME)

3:THE EXECUTIVE DIRECTOR (HR)

AAI
R.G. BHAWAN
SAFDARJUNG AIRPORT
NEW DELHI-110003.

4:THE EXECUTIVE DIRECTOR (F AND A)

AAI
R.G. BHAWAN
SAFDARJUNG AIRPORT
NEW DELHI-110003.

5:THE SENIOR MANAGER (HR)
FOR GENERAL MANAGER (HR) NER

AIRPORT AUTHORITY OF INDIA
BORJHAR
GUWAHATI.

6:THE UNION OF INDIA
REPRESENTED BY THE SECRETARY
MINISTRY OF CIVIL AVIATION
B- BLOCK
RAJIV GANDHI BHAWAN
SAFDARJUNG AIRPORT
NEW DELHI.

7:THE SECRETARY (PENSION)
DEPARTMENT OF PENSION AND PENSIONER'S WELFARE
LOK NAYAK BHAWAN
KHAN MARKET
NEW DELHI- 110003.

8:THE SECRETARY (L AND E)
MINISTRY OF LABOUR AND EMPLOYMENT
SHRAM SHAKTI BHAWAN
RAFI MARG
NEW DELHI- 110001.

9:EMPLOYEES PROVIDENT FUND ORGANIZATION
MINISTRY OF LABOUR AND EMPLOYMENT
GOVERNMENT OF INDIA REGIONAL OFFICE
DELHI (CENTRAL) BHAVISHYA NIDHI BHAWAN
28- COMMUNITY CENTRE
WAZIRPUR INDUSTRIAL AREA
DELHI- 110052.

10:REGIONAL PAY AND ACCOUNTS OFFICE
GOVERNMENT OF INDIA
CIVIL AVIATION DEPARTMENT
CANTEEN BUILDING OF AIRPORT AUTHORITY OF INDIA
NON METRO DIVISION
BESIDE NTB PHASE II / ATC BUILDING
N.S.C.B.I. AIRPORT
KOLKATA- 700052

Advocate for the Petitioner : Mr. P.C.R. Medhi, Advocate.

Advocate for the Respondents: Mr. K. Gogoi, CGC.

Mr. R. Dubey, SC, AAI

Mr. M. K. Mazumdar, SC, EPFO

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 25.04.2023

Date of Judgment : 25.04.2023

JUDGMENT AND ORDER (ORAL)

Heard Mr. P. C. R. Medhi, the learned counsel for the petitioner and Mr. K. Gogoi, the learned counsel appearing on behalf of the Central Government. Also heard Mr. R. Dubey, the learned counsel appearing on behalf of the Airport Authority of India as well as Mr. M. K. Mazumdar, the learned counsel appearing on behalf of the Employees Provident Fund Organization.

2. A perusal of the writ petition transpires that the claim of the petitioner initially was for payment of the Government pension to the deceased husband of the petitioner and for family pension. It can further be seen that the husband of the petitioner Late Manornajan Roy served under the Airport Authority of India for a period of 33 years 9 months 25 days with his rank of service as the Senior Superintendent (E & M) SG in the Borjhar Airport. The husband of the petitioner was retired on 28.02.2017. Prior to the retirement on 12.01.2017, a memorandum was issued to the husband of the petitioner whereby the husband of the petitioner was directed to submit an application for final payment of retirement gratuity, CPF, GSLIS and Benevolent fund etc., in the prescribed format. The husband of the petitioner duly submitted the required documents for getting his retirement benefits. It is relevant to mention that on 26.02.2020, a letter was issued from the Senior Manager (HR), Airport Authority of India to the husband of the petitioner wherein it was written that during the service period, an amount of Rs. 1,25,985/- was overpaid to the husband of the petitioner. It was further mentioned that the said amount was required to be deposited for the purpose of disbursing the Government pension. During the lifetime of the husband of the petitioner he had deposited the said amount of Rs. 1,25,985/- by cheque bearing No.861129 dated

05.03.2020. However, in spite of the said deposit, the pension of the husband was not released for which a legal notice was issued to the Regional Executive Director of the respondent No.1 with a prayer to sanction and allow the Government pension. Thereafter, unfortunately the husband of the petitioner expired on 21.04.2020. Subsequent thereto on 10.08.2020, the Senior Manager, (HR), Airport Authority of India issued a communication to the petitioner wherein it was mentioned that the excess amount to be paid was Rs.2,57,370/- and as only an amount of Rs.1,25,985/- was paid and rest of the amount of Rs.1,31,385/- was pending. The said amount was required to be deposited by the petitioner. The petitioner, upon receipt of the said communication, submitted a reply dated 18.09.2020 protesting against the said demand so made on the ground that such a demand ought to have been made during the life time of the petitioner. It was however, mentioned that the said amount of Rs.1,31,385/- would be returned only after receipt of the Government pension to her husband as well as the family pension to her. However, as nothing was done by the respondent authorities to disburse the pension to the petitioner, the instant writ petition was filed seeking the relief as already mentioned herein above.

3. This Court vide an order dated 12.03.2021 had issued notice. Pursuant to the said notice, an affidavit-in-opposition was filed by the respondent Nos.1, 3, 4, & 5, i.e. the officials of the Airport Authority of India. In the said affidavit-in-opposition, it was mentioned that the husband of the petitioner as well as the petitioner received a total amount of Rs.33,68,698/-, the details of which are mentioned herein under:

- (i) CPF amount of Rs.13,88,101/-
- (ii) Gratuity amount of Rs.10,00,000/-
- (iii) Group Savings Linked Insurance Scheme (GSLIS) amount of Rs.44,415/-
- (iv) Employees Benevolent Fund Scheme (EBFS) amounting to Rs. 1560/- per month for five years w.e.f. 01 03.2017 - Total Rs.93,600/-.

(v) Earned Leave (EL) & Half Pay Leave encashment totaling Rs.2,67,710/- and Rs.5,74,872/-

4. It was also mentioned in the said affidavit that pension of the petitioner's husband has already been sanctioned by EPFO as per the EPS-95 Scheme and the pension payment order was issued by EPFO vide order dated 29.11.2016. It was also mentioned that the petitioner's husband had submitted his claim for pension under the EPS-95 Scheme of the Employees' Provident Fund Organization (EPFO) on 19-01-2016 and this request was scrutinized by verifying with the records maintained in the office of AAI and all the copies of the documents were forwarded to the Corporate Head Quarter on 10.03.2016 from Regional Head Quarter, North Eastern Region, Guwahati. The claim of the petitioner's husband was thereafter scrutinized by the Corporate Head Quarter, New Delhi and after verification, the claim was forwarded to Regional Provident Fund Commissioner, the respondent No.10 which was the nodal authority for sanction of pension under EPS-95 Scheme. The respondent No.10 had sanctioned the pension at the rate of Rs. 11,048/- per month and Pension Payment Order (PPO) was issued by EPFO vide order dated 29.11.2016. It was further mentioned that the husband of the petitioner was getting a monthly pension of Rs. 11,048/- per month w.e.f. 25.02.2015.

5. It further reveals from the records that on 12.09.2022 when the matter was listed before this Court, attention was drawn to an Office Memorandum dated 11.01.2022 on the subject- **Government pensionary benefit due to employees transferred en-masse from the erstwhile Civil Aviation Department [CAD]/Directorate General of Civil Aviation [DGCA] to Airport Authority of India [AAI]**. From the Office Memorandum, it reveals that the Ministry of Civil Aviation in order to stop any arrangement of dual pension from two authorities, had impressed upon the Ministry of Labour Employment to take up the matter with the Employees' Provident Fund Organization to favourably consider and stop the payment of EPFO pension to the Government absorbees of AAI as a special measure so that AAI and DGCA can start processing the pension cases for issuance of Government Pension Payment Order. However, due to non-resolution of the said issue from the Department in

question, the petitioner who is a widow of an AAI absorbee and similarly situated persons have been receiving only EPFO pension which is at a rate much lesser than the pension they were likely to receive in the event of issuance of a Government Pension Payment Order. It is under such circumstances, this Court directed the learned counsel appearing on behalf of the Central Government, the EPFO as well as the AAI to obtain instructions in the matter. It further reveals that on 28.10.2022, the learned counsel appearing on behalf of the Central Government submitted that pursuant to the order dated 12.09.2022, he had sent letter to the EPFO but no instructions have been received from their end. Thereupon, the matter was again listed on 22.12.2022 before this Court. The relevant portion of the said order is quoted herein below:-

“It has been brought to the attention of this Court that the Ministry of Civil Aviation vide an Office Memorandum dated 11.01.2022, which pertains to government pensionary benefit due to the employees transferred en-mass from the erstwhile Civil Aviation Department/DGCA to Airport Authority of India (AAI), had mentioned that those government employees who have been absorbed in the Airport Authority of India and who have rendered less than 10 years of service at the time of absorption shall be given an option for government pension. It has been further mentioned that prior to the said decision of the Ministry of Civil Aviation, employees who have already retired were receiving Employees Provident Fund, Pension as admissible and under the AAI Rules. It has been further mentioned in the said Office Memorandum that those employees who opt for the government pension based on the combined service rendered in the DGCA and NAA/AAI would not be eligible for any other superannuation benefit schemes of AAI including EPF pension. Further, it was mentioned that upon issuance of Pension Payment Order (PPO) for the government pension, the Airport Authority of India shall immediately take up the matter with the Employees’ Provident Fund Organization to ensure stoppage of EPF pension forthwith.

In terms with the said policy, the Employees’ Provident Fund Organization had stopped EPF pension in 443 cases. However, in the month of July, 2021, the Employees’ Provident Fund Organization conveyed their decision that there is no provision for stoppage of pension under the EPF and NP Act, 1952 and therefore, again restarted pension in respect of those cases where pension have already been stopped by EPFO. Under such circumstances it resulted in

payments of double pensionary benefits to those absorbee pensioners of Airport Authority of India. Further, the pensioners receiving the EPF pension, some of the pensioners have already been issued the government pension PPO while the others, the same is yet to be issued.

The Employees' Provident Fund Organization was thereupon requested to reconsider the decision taken in the month of July, 2021. However, the said organization advised the Airport Authority of India to issue government pension by adjusting the amount of EPF pension. The said matter thereupon was sent to the Ministry of Labour & Employment.

It has been also mentioned that the said issue has been sent to the Department of Pension & Pensioner's Welfare, seeking clarification as to whether it would be permissible that an amount equal to government pension minus the EPF pension be paid as government pension.

This Court had made a specific query upon Mr. K. C. Gogoi, the learned counsel appearing on behalf of the Central Government as to whether the Department of Pension and Pensioner's Welfare have taken any decision in pursuance to the aforesaid matter by way of clarification. The learned counsel submitted that he would like to file an affidavit in that regard.

This Court would also like to take note of another Office Memorandum issued by the Ministry of Civil Aviation of the same date, wherein there is a mention of an Order being passed by the Madras High Court dated 05.12.2019 in WP(C) No. 12228/2018, whereby the Madras High Court allowed the petitioner therein to forego the EPF pension and opt for family pension under the Tamilnadu Pension Rules and also directed the Employees' Provident Fund Organization to stop the payment of pension under the EPF family pension. On a specific query being made upon the learned counsel for the petitioner, he submits that as per his instruction the petitioner is willing to forego the EPF pension, provided the petitioner is being granted the regular government pension PPO.

Taking into account the aforesaid, this Court fixes the matter on 20.01.2023.

The learned counsel for the Central Government is directed to file his affidavit on or before 18.01.2023 without fail.

Let the matter be taken up for further consideration on the next date."

6. From a perusal of the above quoted order, it would reveal that this Court made a query upon the learned counsel appearing on behalf of the Central Government as to

whether the Department of Pension and Pensioner's Welfare have taken any decision in pursuance to the clarification which was sought for. On the said query, the learned counsel submitted that he would like to file an affidavit in that regard.

7. It is further apparent from a perusal of the orders dated 20.01.2023 and 20.03.2023 that the instructions which were sought from the Central Government was not forthcoming. While hearing the matter again on 28.03.2023, this Court found from a perusal of the materials on record that there is no material except the submission made by the learned counsel for the petitioner that the petitioner would opt for the Government pension thereby permitting the concerned respondent authorities to recover such amount so received on account of the pension under the EPS-95 Scheme. Under such circumstances, this Court vide an order dated 28.03.2023 opined that if the petitioner wants to opt for the Government pension, there has to be a clear and unequivocal stand being taken by way of an affidavit to the effect that she would forego the Employees Provident Fund Pension and will opt for the family pension under the Central Government and further to that she would have no objection to the recovery of the amounts already paid to the petitioner towards family pension under the Employees Provident Fund Pension Scheme and if the said amount payable by her under the Employee Provident Fund Pension Scheme is recovered from the arrear to which the petitioner is otherwise entitled from the Government Pension. Accordingly, this matter was fixed on 11.04.2023.

8. It transpires that pursuant thereto on 04.04.2023, the petitioner had filed an affidavit. The contents of paragraph Nos.1 to 4 of the said affidavit being relevant are reproduced herein under:-

*"1. That I prayed through this Writ Petition before the Hon'ble High Court for getting my Govt. pension of my diseased husband who worked as the **Senior Superintendent (E & M) SG** in the Borjhar Airport in the Office of the Airport Authority of India, since retired on 28.02.2017 and expired on 21.04.2020.*

2. That I have still been getting the Family pension under the Employees Provident Fund

Pension Scheme after the death of my husband on 21.04.2020, till today.

*3. That I do **forgo** my family pension still been paid under the Employees Provident Fund Pension Scheme against the allowing of my Family Pension under the Central Govt. and on being paid the entire arrear amount still kept unpaid since the date of retirement of my husband on 28.02.2017.*

4. That further I do not have any objection in the event the entire amount of the Family pension, under Employees Provident Fund Pension scheme received by myself and by my diseased husband during his lifetime, becomes recovered from the amount of arrear pension on being paid and being allowed the Govt. Pension to me formally.”

9. From a perusal of the said affidavit it transpires that the petitioner has duly admitted that she is getting the family pension under the Employees’ Provident Pension Scheme after the death of her husband since 21.04.2020 till date. The petitioner has further agreed to forego her family pension under the Employees’ Provident Pension Scheme if the family pension under the Central Government is allowed since the date of retirement of her husband on 28.02.2017. It has further been mentioned that the petitioner has no objection in the event the entire amount under the Employees’ Provident Pension Scheme received by herself and her deceased husband during his lifetime is recovered from the amount of arrear Government pension on being paid and allowed her formally.

10. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

11. Mr. M. K. Mazumdar, the learned counsel appearing on behalf of the Employees Provident Fund Organization has submitted that as per his instructions, the total amount which the petitioner as well as her husband had received on account of pension and family pension from the EPFO upto March, 2023 is Rs.8,73,345/-.

12. While hearing the matter, the learned counsel appearing on behalf of the Airport Authority of India drawing the attention to the Office Memorandum dated 11.01.2022 and the reference being made to an order passed by the High Court of Madras has also

placed the order dated 05.12.2019 passed by the High Court of Madras in W.P. No.12228 of 2019. A perusal of the said order would reveal that the petitioners therein taking into account that the pension in terms with the Tamil Nadu Pension Rules was more beneficial opted for pension under the said Rules thereby foregoing the pension as well as family pension sanctioned by the Employees Provident Fund Authority. It further reveals from the order dated 05.12.2019 that the learned Single Judge of the High Court of Madras had taken into consideration an order being passed by the learned Division Bench of the Madras High Court in W.A. No.1246/2009 dated 18.08.2010 wherein the learned Division Bench held that the respondents were not justified in denying the family pension to the appellant therein solely on the ground that she was receiving pension under the Employees Provident Fund Scheme and accordingly directed that the appellant therein would be entitled to the family pension in terms with the Tamil Nadu Pension Rules and there shall be a deduction of the Employees Provident Fund Pension paid to the appellant for the period during which the appellant as well as her had husband received. It is also mentioned in the order dated 05.12.2019 that the said order of the learned Division Bench of the Madras High Court dated 18.08.2010 in W.A. No.1246/2009 was challenged before the Supreme Court by filing a Special Leave to Appeal (C) No.8381/2011 and the Supreme Court had dismissed the said Special Leave to Appeal vide an order dated 13.05.2011. Taking into account the same, the learned Single Judge of the Madras High Court vide the order dated 05.12.2019 observed at paragraph No.13 as herein under:-

“13. In view of the above, the petitioner is directed to submit a fresh representation to the 4th respondent clearly spelling out her option to forego the Employees’ Provident Fund Family Pension and to opt for Family Pension under the Tamil Nadu Pension Rules. This representation shall be given within a period of one week from the date of receipt of copy of this order. Immediately on receipt of representation made by the petitioner, the 4th respondent shall collect all the service details of the husband of the petitioner and the other details regarding the pension received under the Employees’ Provident Fund Family Pension, till date and

forward the same to the 6th respondent. On receipt of the same, the 6th respondent shall stop the payment of the pension under the Employees' Provident Fund Family Pension and shall forward the papers to the 4th respondent. The 4th respondent shall thereafter forward the entire records to the 3rd respondent. The 3rd respondent shall consider the entitlement of the petitioner for receipt of Family Pension under the Tamil Nadu Pension Rules and forward the same to the 2nd respondent. The 2nd respondent shall thereafter issue the Government Order and thereafter the petitioner can start receiving the Family Pension under the Tamil Nadu Pension Rules. The whole process shall be completed within a period of 12 weeks from the date of receipt of copy of this order."

13. This Court upon perusal of the order dated 05.12.2019, the facts involved in the instant case as well as the Office Memorandums dated 11.01.2022 issued by the Ministry of Civil Aviation, Government of India is of the opinion that the petitioner herein would also be entitled to choose between the pension under the CCS Pension Rules, 1972 as well as the pension under the EPS-95 Scheme subject to the petitioner foregoing of such benefit which the petitioner or her husband have received under the EPS-95 Scheme.

14. Accordingly, this Court, therefore, disposes of the instant writ petition by taking into account the said affidavit so filed by the petitioner on 04.04.2023 and with a direction to the petitioner to submit a fresh representation to the respondent No.2 who shall thereupon forward the same to the Competent Authority clearly spelling out her option to forego the Employees' Provident Fund Family Pension and to opt for the family pension under the CCS Rules, 1972. The said representation shall be submitted within a period of 3 (three) weeks along with a certified copy of the instant order. The respondent No.2, upon receipt of the said representation shall collect all the service details of the husband of the petitioner and the other details regarding the pension received under the Employees' Provident Fund Family Pension till such date and thereupon forward the same to the respondent No.9. On receipt of the same, the respondent No.9 shall stop the payment of pension under the Employees' Provident

Fund Family Pension Scheme and thereupon shall forward the papers again back to the respondent No.2. The respondent No.2 thereupon shall forward the entire records to the respondent No.10. The respondent No.10 shall consider the entitlement of the petitioner for family pension under the CCS Pension Rules, 1972 and shall thereafter issue the Government order and thereafter the petitioner starts receiving the family pension under the CCS Pension Rules, 1972. The whole process shall be completed within a period of 12 (twelve) weeks from the date of receipt of the representation as directed herein above.

15. It is made clear that the respondent No.2 before forwarding the documents to the respondent No.9 shall also take into consideration the amount which the petitioner is entitled in terms with the CCS Pension Rules, 1972 from the date of entitlement of the husband of the petitioner, i.e. 01.03.2017 and also deduct the amount to which the petitioner and her husband received under the EPS-95 Scheme.

16. With the above directions and observations, the instant petitioner stands disposed of.

JUDGE

Comparing Assistant